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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

KRISTIN SWEARINGEN,

Plaintiff,

v.

AMAZON.COM SERVICES, INC. and  
AMAZON.COM INC., Delaware  
corporations, and, AMAZON.COM.DEDC,  
LLC, a Delaware limited liability company.

Defendants.

Case No. 3:19-cv-01156-JR

**DEFENDANTS AMAZON.COM  
SERVICES, INC., AMAZON.COM INC.,  
AND AMAZON.COM.DEDC, LLC'S  
ANSWER AND DEFENSES TO  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT**

Defendants Amazon.com Services, Inc., Amazon.com, Inc., and Amazon.com.dedc, LLC (collectively, “Amazon” or “Defendants”)<sup>1</sup> respond to the allegations contained in the First Amended Individual and Class Action Complaint (the “Amended Complaint”) filed by Plaintiff Kristin Swearingen (“Plaintiff” or “Swearingen”) as follows:

### **INDIVIDUAL AND CLASS ACTION COMPLAINT<sup>2</sup>**

1. Amazon admits that Plaintiff filed this Amended Complaint against Defendants on behalf of herself and a putative class of other purportedly similarly situated employees. Amazon denies that Plaintiff’s claims are appropriate for a class action and further denies the remaining allegations in Paragraph 1 of the Amended Complaint.

2. Amazon admits that Plaintiff purports to bring claims under Oregon wage and hour laws on behalf of herself and a putative class of present and former employees of Amazon. Amazon further admits that Plaintiff seeks to recover alleged unpaid wages; penalty wages; statutory damages; attorney fees, costs, and disbursements; pre- and post-judgment interest; and equitable relief. Amazon lacks sufficient knowledge or information to form a belief as to the truth of the allegations regarding Plaintiff’s bases for her allegations herein. Amazon denies that Plaintiff’s claims are appropriate for a class action, denies that Plaintiff or her putative class are

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<sup>1</sup> Amazon.com, Inc. has no employees and, therefore, is not a proper defendant to this litigation. In addition, Amazon.com.dedc, LLC was merged into Amazon.com Services, Inc. on January 1, 2019. Accordingly, Amazon.com Services, Inc. is the only proper defendant in this case.

<sup>2</sup> Amazon’s Answer incorporates all or portions of headings contained in the Amended Complaint for ease of reference. Amazon does not construe such captions to constitute allegations of fact, but to the extent the Court deems the Amended Complaint’s headings to contain factual contentions to which Amazon must respond, Amazon denies such allegations.

entitled to any relief whatsoever, and further denies the remaining allegations in Paragraph 2 of the Amended Complaint.

### **PARTIES**

3. Amazon admits that Amazon.com.dedc, LLC employed Plaintiff from September 4, 2017 to July 11, 2018. Amazon further admits that Plaintiff purports to represent a putative class of certain employees of Amazon. Amazon denies that Plaintiff's claims are appropriate for a class action and further denies the remaining allegations in Paragraph 3 of the Amended Complaint.

4. Amazon admits that Amazon.com Services, Inc. and Amazon.com Inc. are Delaware corporations, and that Amazon.com.dedc, LLC was a Delaware limited liability company. Amazon further admits that Amazon.com.dedc, LLC employed Plaintiff in Multnomah County, Oregon. Amazon denies the remaining allegations in Paragraph 4 of the Amended Complaint.

### **COMMON FACTS CONSTITUTING CLAIMS FOR RELIEF**

5. Amazon denies the allegations in Paragraph 5 of the Amended Complaint.

6. Amazon admits only that it rounded the fractional cents of Plaintiff's federal tax liabilities to determine the amounts to withhold from her wages for those taxes, in accordance with federal law. Amazon denies the remaining allegations in Paragraph 6 of the Amended Complaint.

7. Amazon denies the allegations in Paragraph 7 of the Amended Complaint.

### **CLASS ACTION ALLEGATIONS**

8. Amazon admits that Plaintiff purports to bring this action on behalf of a putative class of all current and former Oregon Amazon employees who received a paycheck on or after December 20, 2012 for work performed in Oregon. Amazon denies that Plaintiff's claims are appropriate for a class action and further denies the remaining allegations in Paragraph 8 of the Amended Complaint.

#### **Numerosity**

9. Amazon denies the allegations in Paragraph 9 of the Amended Complaint.

#### **Commonality**

10. Amazon denies the allegations in Paragraph 10 of the Amended Complaint.

#### **Typicality**

11. Amazon denies the allegations in Paragraph 11 of the Amended Complaint.

#### **Adequacy of Representation by Plaintiff**

12. Amazon lacks knowledge or information sufficient to form a belief as to the allegations regarding Plaintiff's retained counsel. Amazon denies the remaining allegations in Paragraph 12 of the Amended Complaint.

#### **Compliance with ORCP 32 H**

13. Amazon admits that Plaintiff's counsel mailed to Amazon two prelitigation notices: one dated November 21, 2018 (attached hereto as Exhibit 1) and one dated May 15, 2019 (attached hereto as Exhibit 2). Answering further, Amazon states that it sent to Plaintiff's counsel a letter dated June 14, 2019 with enclosures (attached hereto as Exhibit 3) in response to Plaintiff's counsel's May 15, 2019 prelitigation notice. Amazon denies the remaining allegations in Paragraph 13 of the Amended Complaint.

**Superiority of Class Action**

14. Amazon denies the allegations in Paragraph 14 of the Amended Complaint.

**FIRST CAUSE OF ACTION**

**Oregon Unpaid Wages  
(unpaid time claims only)**

15. Amazon restates and incorporates by reference its answers to Paragraphs 1 through 14 of the Amended Complaint as if fully set forth herein.

16. Amazon denies the allegations in Paragraph 16 of the Amended Complaint.

17. Amazon denies the allegation in Paragraph 17 of the Amended Complaint.

**SECOND CAUSE OF ACTION**

**Oregon Unpaid Wages Upon Termination  
(unpaid time and unlawful deductions claims)**

18. Amazon restates and incorporates by reference its answers to Paragraphs 1 through 18 of the Amended Complaint as if fully set forth herein.

19. Amazon denies the allegations in Paragraph 19 of the Amended Complaint.

20. Amazon denies the allegations in Paragraph 20 of the Amended Complaint.

**THIRD CAUSE OF ACTION**

**Oregon Wrongful Deductions  
(unlawful deductions claims only)**

21. Amazon restates and incorporates by reference its answers to Paragraphs 1 through 20 of the Amended Complaint as if fully set forth herein.

22. Amazon denies the allegations in Paragraph 22 of the Amended Complaint.

Answering further, Amazon states that all of Plaintiff's Earnings Statements from her

employment with Amazon.com.dedc, LLC, showing each of the deductions made from her wages, are compiled and attached hereto as Exhibit 4.

23. Amazon denies the allegations in Paragraph 23 of the Amended Complaint.

### **JURY DEMAND**

Amazon admits that Plaintiff demands a trial by jury on all claims for which it is available, but denies that Plaintiff is entitled to a jury trial.

### **PRAYER FOR RELIEF**

Amazon denies that Plaintiff or her putative class is entitled to any of the relief set forth in the Prayer for Relief, including certification of the putative class, and further denies the remaining allegations in the Prayer for Relief.

### **DEFENSES AND RESERVATION OF RIGHTS**

Without conceding that it bears the burden of proof or persuasion as to any one of them, Amazon asserts the following separate defenses to the Amended Complaint:

1. Plaintiff's Amended Complaint, in whole or in part, fails to state a claim upon which relief can be granted.
2. Neither Amazon.com, Inc. nor Amazon.com.dedc, LLC is a proper party to this action.
3. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, because they have already been paid and/or received all wages due to them under applicable law.

4. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, because Amazon deducted from her or their wages no more than required by law.

5. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, to the extent that some or all of these individuals have failed to mitigate their damages or otherwise avoid harm.

6. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, because they have sustained no damages.

7. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, by the *de minimis* and *de minimis non curat lex* doctrines.

8. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, to the extent these individuals performed compensable work activities that were not known to Amazon or that could not reasonably have been known by Amazon.

9. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, to the extent that their claimed compensable activities were preliminary or postliminary activities.

10. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, to the extent that their claimed compensable activities are not "work," "hours worked," or otherwise compensable time under Oregon law.

11. Some or all of Plaintiff's claims and those of some or all of the individuals she seeks to represent are barred, in whole or in part, by exclusions, exceptions, credits, or offsets permissible under Oregon law.

12. Amazon has at all times acted in good faith and have had reasonable grounds for believing that any alleged acts and omissions were not violations of Oregon law.

13. To the extent Amazon violated any Oregon law (which is expressly denied), it did not do so willfully.

14. Certification of the proposed class action is inappropriate because Plaintiff cannot demonstrate that she has met the requirements of Rule 23 of the Federal Rules of Civil Procedure.

WHEREFORE, Amazon prays for judgment as follows:

1. Plaintiff and putative members of the purported class action take nothing by the Amended Complaint;

2. That judgment be entered against Plaintiff and putative members of the purported class action, and in favor of Amazon;

3. That Amazon be awarded attorneys' fees incurred herein;

4. That Amazon be awarded costs of suit herein; and

5. For such other and further relief as the Court deems just and proper.



DATED: August 2, 2019

PERKINS COIE LLP

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*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury under the laws of the State of Oregon that, on August 2, 2019, they caused to be served on the person(s) listed below in the manner shown:

**DEFENDANTS AMAZON.COM SERVICES, INC., AMAZON.COM INC., AND  
AMAZON.COM.DEDC, LLC'S ANSWER AND DEFENSES TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

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*Attorneys for Plaintiff*

- ☒ By E-Filing
- ☐ By Messenger
- ☐ By United States Mail, First Class
- ☒ By E-Mail

Dated at Portland, Oregon, this 2nd day of August, 2019.

By: s/ Sarah J. Crooks

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